



Federal Communications Commission
Washington, D.C. 20554

February 20, 2004

Ms. Marcia M. Waldron, Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Prometheus Radio Project *et al.* v. FCC & USA, No. 03-3388
(and consolidated cases) (argued February 11, 2004)

Dear Ms. Waldron:

Pursuant to Fed. R. App. P. 28(j), this letter is to advise the Court that the FCC's Media Bureau has issued a public notice (attached hereto) asking for comment on the effect of the Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. B, § 629 on the Commission's "authority and decision" with respect to the UHF discount. The public notice supports the government's suggestion that, if the claims of intervenor Capitol are not dismissed or rejected on the merits, it would be appropriate for the Court to hold the challenge to the UHF discount in this case in abeyance pending resolution by the Commission in the first instance.

I would appreciate it if you would distribute the enclosed additional copies of this letter and its attachment to the members of the panel (Scirica, C.J., Ambro, Fuentes, JJ.) before whom this case was argued.

Sincerely,

John A. Rogovin
General Counsel

cc: Counsel of record (as shown on attached certificate)

Attachment